UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/25172*
2 March 1993

ORIGINAL: ENGLISH

NOTE BY THE SECRETARY-GENERAL

The Secretary-General has the honour to transmit to the Security Council a report submitted by the Executive Chairman of the Special Commission established by the Secretary-General pursuant to paragraph 9 (b) (i) of Security Council resolution 687 (1991).

* Reissued for technical reasons.

Annex

Report by the Executive Chairman of the Special Commission

1. In response to a wish expressed by the members of the Security Council, the Special Commission herewith presents an account of the Commission's operations in connection with the events since Iraq first informed the Commission that the Commission would not be allowed to use its aircraft to transport personnel and equipment into Iraq from the Commission's Field Office in Bahrain. In this context, and for the sake of clarity, brief references to the Commission's rights and obligations are included.

Mandate

2. The Special Commission was established pursuant to paragraph 9 (b) (i) of section C of Security Council resolution 687 (1991), inter alia, in order:

(a) To carry out immediate on-site inspections of Iraq's biological, chemical and missile capabilities;

(b) To take possession for the destruction, removal or rendering harmless of all chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities;

(c) To supervise the destruction by Iraq of all its ballistic missiles with a range greater than 150 kilometres and related major parts, including launchers, and repair and production facilities; and

(d) To assist the Secretary-General in developing a plan for the future ongoing monitoring and verification of Iraq's compliance with its obligation not to use, develop, construct or acquire any of the items listed above.

3. In addition, the Commission has been charged with certain duties and responsibilities, such as transportation, communication and logistic support, information and surveillance. These have been enumerated in detail in Security Council resolutions 707 (1991) and 715 (1991).

4. Following the adoption of the Security Council resolution 687 (1991), the Office of Legal Affairs was asked to comment on the status of the Special Commission. It stated that the Commission was to be treated as a subsidiary organ of the Security Council.

5. In practical terms, the Special Commission seeks to implement its mandate without reference to the Security Council on operational issues. This includes the decision as to whether conditions are such as to permit continued operations while ensuring the safety and security of Commission personnel and property. If the Commission is blocked in its efforts to fulfil its mandate,

it informs the Council, through the President, of the situation forthwith. Responsibility then lies with the Council and its members, not the Commission, i.e. to decide what action is required to rectify the situation. In short, the Commission is given responsibility for implementation, and the Council preserves for itself enforcement.

6. This principle was confirmed during the March 1992 meetings of the Council addressed by the Deputy Prime Minister of Iraq, Mr. Tariq Aziz. During that meeting, Mr. Aziz sought the Council's intervention in differences between Iraq and the Special Commission on such an operational matter as the destruction of certain equipment designated for destruction by the Commission. The members of the Council reaffirmed that it was for the Special Commission alone to determine which items must be destroyed under paragraph 9 of resolution 687 (1991) (S/23663, S/23699, S/PV.3059 and resumption 1).

Recent events

7. On 7 January 1993, the Office of the Special Commission in Baghdad received a note from the Ministry for Foreign Affairs of Iraq stating that henceforth the Commission would be denied the use of the Habbaniyah airfield and that the Commission should use either Iraqi aircraft to transport its personnel and equipment between Bahrain and Iraq or the land route from Amman, Jordan. This was duly reported orally by the Commission to the Council on 8 January, resulting in the relevant parts of the presidential statement issued that day (S/25081), and subsequently supplemented by a letter to the President of the Security Council (see appendix I). The statement noted that the restrictions placed on the Commission's flights constituted an "unacceptable and material breach" of the relevant provisions of United Nations Security Council resolution 687 (1991) and contained a warning to Iraq about serious consequences that would ensue from failure to comply with its obligations.

8. On 9 January 1993, the Executive Chairman of the Special Commission sent, through the Permanent Mission of Iraq to the United Nations, a letter to the Minister for Foreign Affairs (see appendix II), informing him of the content of the presidential statement and attaching new notifications for Special Commission flights in accordance with the established procedures. A third-person note (see appendix III) containing the same message was delivered to the Ministry for Foreign Affairs in Baghdad the next morning. During the meeting in which the note was delivered, the Iraqi official cited a letter, dated 9 January, from the Minister for Foreign Affairs to the President of the Security Council, linking the decision not to permit Special Commission flights to the Sanctions Committee decision not to permit Iraqi Airways to resume its international operations and restating the options offered to the Commission of using Iraqi aircraft or the land route. The Executive Chairman of the Commission was referred to the same letter in a response from the Permanent Representative of Iraq to the United Nations.

9. This response was reported to the Council on 11 January and resulted in the relevant sections of the presidential statement issued that day in which the Council demanded that Iraq cooperate fully with the Special Commission and warned Iraq of "the serious consequences that will flow from such continued defiance" (S/25091). This statement was responded to formally by the Minister for Foreign Affairs of Iraq on 12 January in a letter to the Secretary-General. In a further letter of 13 January to the President of the Security Council, the Minister for Foreign Affairs again refused to allow flights under the normal procedures, stating that flights would be accepted on a case-by-case basis but that Iraq could bear no responsibility for the safety of the Commission's aircraft. Furthermore, the response did not address the issue of the notifications already with Iraq.

10. On 14 January, the Commission delivered a second note (see appendix IV) to the Iraqi authorities together with new notifications for its flights. The Commission stated its expectation that it would receive acknowledgement in writing in good time for the flights to proceed without delay.

11. As of the morning of 15 January, no response to these notifications had been received. The Executive Chairman therefore informed the Permanent Representative of Iraq to the United Nations, Ambassador Nizar Hamdoon, in a telephone conversation that, unless the Commission received a response before 1600 hours EST that afternoon, he would be obliged to inform the Council that a further flight had been blocked by Iraq's actions. At 1300 hours EST, the Commission received a note from the Ministry of Foreign Affairs which reiterated the fact that Iraq would bear no responsibility for the safety of Commission flights and extended that condition to cover any confusion or error on the Iraqi side. Later that evening the Commission sent to the Permanent Mission of Iraq to the United Nations a further note (see appendix V) containing new flight notifications and demanding that they be acknowledged in accordance with Iraq's obligations. This note was also delivered directly to the Ministry in Baghdad the next morning by the Special Commission Field Office there. The note was accompanied by the Executive Chairman's letter to the President of the Security Council (see appendix VI) informing him that the Iraqi response had constituted a refusal on the part of Iraq of the Commission's notifications because it abdicated Iraq's responsibility for ensuring the security and safety of Commission personnel. The letter to the President also stated that the Commission had made new flight notifications to Iraq with the expectation that those notifications would be acknowledged in accordance with Iraq's obligations.

12. On 16 January, the Commission received a further note from the Ministry of Foreign Affairs. It stated that Iraq would guarantee the safety of the Commission's flights to and from Habbaniyah airfield if they entered Iraqi airspace from Jordanian airspace and requested further notifications from the Commission for new flight paths following that route. The Commission responded in a note (see appendix VII) the same evening, reminding Iraq of its obligations under resolutions 687 (1991), 707 (1991) and 715 (1991), and the exchange of leters of May 1991 between the Secretary-General and the Minister for Foreign Affairs of Iraq, informing Iraq that it could not operate using

the longer route specified by Iraq, and explaining that it coordinated routinely with the States patrolling the "no-fly zone" so that the aircraft of those States did not represent a threat to the safety of the Commission's aircraft. The Commission informed the Iraqi authorities of its intention to fly using the direct route between its base of operations in Bahrain and Habbaniyah airfield and demanded that Iraq ensure the security and safety of the Commission's flights.

13. On 17 January, the Commission received another note stating that Iraq would guarantee the safety of the Commission's aircraft if the Commission would guarantee that coalition aircraft did not fly in Iraqi airspace while the Commission's aircraft were in the air. In response the same day, the Commission sent a note (see appendix VIII) stating that it was not in a position to provide the guarantees referred to in the Iraqi note. The reply again stressed that the Commission would coordinate with the States concerned to ensure the conditions for safe flight in the "no-fly zone" and again demanded guarantees from Iraq that it would ensure the security and safety of the flights previously notified to Iraq. The Commission also stated that it would coordinate closely with the Iraqi authorities in this matter.

14. In the evening (EST) of 18 January, Iraq sent a note which merely reiterated the condition for Commission flights set the previous day.

15. At 1300 hours on 19 January, Iraq informed the Commission that, on the basis of the statement of the Revolution Command Council, it would allow the resumption of Commission flights in accordance with established procedure as agreed by the two sides. By telephone, a guarantee was given that Iraq would ensure the safety of the Commission's aircraft.

Commentary

16. It can be seen from the above that this recent crisis concerning the flights of the Special Commission's aircraft was brought about by Iraq's initial refusal on 7 January 1993 to permit the Commission to use its aircraft to transport its personnel and equipment into Iraq. This was a most serious breach of Iraq's obligations under the Council's resolutions 687 (1991), 707 (1991) and 715 (1991), all adopted under Chapter VII of the Charter of the United Nations, and the exchange of letters of May 1991 between the Secretary-General and the Minister for Foreign Affairs of Iraq. It should also be noted that Iraq was required to, and did, acknowledge explicitly in writing its acceptance of the provisions of resolution 687 (1991), establishing the cease-fire and providing the conditions essential for the restoration of peace and security in the region, and the agreement on the facilities, privileges and immunities contained in the exchange of letters (S/22456).

17. Upon learning of Iraq'S refusal of the Special Commission's right to fly its aircraft, the Commission reported the matter to the President of the Security Council and, in an informal session of the Council, to the members. Upon the statement by the Council, the Commission immediately sought to resume

its operations and hence to allow Iraq to erase its breach by allowing the Commission to exercise its rights without conditions. Iraq, as it did on each subsequent occasion until 19 January 1993, again repeatedly refused to allow the Commission to exercise its rights without condition. At each Iraqi refusal, the Commission immediately informed the President of the Council of the situation and subsequent actions. Each time it also responded to Iraq the same day, offering a way for Iraq to meet its obligations, e.g. by stating that, through the Commission's coordination with the States enforcing the "no-fly zone", the conditions for safe flight would be ensured, provided Iraq did not itself threaten the flights.

Appendix I

Letter dated 8 January 1993 from the Executive Chairman of the Special Commission addressed to the President of the Security Council

I have the honour, in agreement with the Director General of the International Atomic Energy Agency (IAEA), to bring to your attention the following adverse development affecting the work of the Special Commission and IAEA in implementation of their mandates under section C of Security Council resolution 687 (1991) and other relevant Security Council resolutions and decisions.

The Special Commission has received the attached note (No. 10/4/92035) from the Iraqi Ministry of Foreign Affairs concerning its use of aircraft in support of its operations in Iraq. The note suggests that the Special Commission might charter Iraqi aircraft for its transport needs or use the land route. It insists that no aircraft, other than chartered Iraqi aircraft, will henceforth be allowed to use Habbaniyah airfield, which has so far served as the sole point of entry into Iraq for the Commission's fixed-wing aircraft.

This prohibition on the Special Commission's use of its own aircraft in support of its operations in Iraq is a most serious breach of Iraq's obligations under the pertinent decisions of the Security Council, including Security Council resolutions 687 (1991), 707 (1991) and 715 (1991), and of Iraq's obligations under its agreement with the United Nations relating to the facilities, privileges and immunities of the Special Commission and IAEA in Iraq. Specific provisions which would be violated if Iraq persists include:

(a) The exchange of letters between the Minister for Foreign Affairs of Iraq and the Secretary-General of May 1991. The exchange provides that the facilities, privileges and immunities of the Special Commission shall include:

> "(i) Unrestricted freedom of entry and exit without delay or hindrance of its ... means of transport;
>
> "(ii) Unrestricted freedom of movement without advance notice within Iraq of ... its equipment and means of transport;
>
> ...
>
> "(x) Acceptance of United Nations registration of means of transport on land, sea and in the air and United Nations licensing of the operators thereof".

(b) United Nations Security Council resolution 707 (1991). Paragraph 3 "Demands that Iraq

...

"(v) allow the Special Commission, IAEA and their inspection teams to conduct both fixed-wing and helicopter flights throughout Iraq for all relevant purposes including inspection, surveillance, aerial surveys, transportation and logistics without interference of any kind and upon such terms and conditions as may be determined by the Special Commission, and to make full use of their own aircraft and such airfields in Iraq as they may determine are most appropriate for the work of the Commission;

...

"(vii) ensure the complete implementation of the privileges, immunities and facilities of the representatives of the Special Commission and IAEA in accordance with its previous undertakings and their complete safety and freedom of movement".

(c) The plan for ongoing monitoring and verification (S/22871/Rev.1), approved by Security Council resolution 715 (1991). Paragraph 17 states that "the Special Commission shall have the right:

...

"(e) To designate for aerial overflight any area, location, site or facility in Iraq;

"(f) To conduct, at any time and without hindrance, both fixed-wing and rotary-wing flights throughout Iraq for all relevant purposes, including inspection, surveillance, aerial overflights (surveys), transportation and logistics without interference of any kind and upon such terms and conditions as may be determined by the Special Commission;

"(g) To make full use of its own aircraft with appropriate sensors as necessary and such airfields in Iraq as the Special Commission may determine are most appropriate for its work".

Paragraph 18 of the plan stipulates that "Iraq shall:

...

"(b) Accept unconditionally aerial overflight of any area, location, site or facility designated by the Special Commission;

...

"(d) Accept unconditionally and cooperate with the Special Commission in conducting fixed-wing and rotary-wing flights throughout Iraq for all relevant purposes, including inspection, surveillance, aerial overflights (surveys), transportation and logistics without interference of any kind and upon such terms and conditions as may be determined by the Special Commission;

"(e) Accept unconditionally the Special Commission's determinations regarding use of the Commission's aircraft with appropriate sensors as necessary and airfields in Iraq for such aircraft;

"(f) Not obstruct aerial overflights ... ;

"(g) ... ensure the complete implementation of the privileges and immunities of the personnel of the Special Commission and their complete safety and freedom of movement;

"(h) Cooperate fully with the Special Commission and facilitate its inspections, overflights and other activities under the plan;

"(i) Accept unconditionally the rights of the Special Commission under the plan and not take any action to interfere with, impede or obstruct the exercise by the Special Commission of its functions and rights under Security Council resolutions 687 (1991), 707 (1991) and the plan".

Taken together with the other instances of Iraq's failure to meet its obligations under the resolutions and decisions of the Security Council, which have been reported to the Council most recently in the Special Commission's semi-annual report on its operations dated 17 December 1992 and circulated in document S/24984, this latest serious breach could bring the Special Commission's and IAEA's activities in Iraq, including on-site inspections pursuant to Security Council resolution 687 (1991), to a virtual standstill unless Iraq immediately accepts the Special Commission's aircraft landing and taking off from appropriate airfields of the Commission's choice, in particular in the Baghdad area, and complies with all its other obligations under the relevant Security Council resolutions and decisions.

I should be grateful if you could have this letter and its enclosure brought to the attention of the members of the Security Council for appropriate action.

(Signed) Rolf EKEUS
Executive Chairman
Office of the Special Commission

Appendix II

Letter dated 9 January 1993 from the Executive Chairman of the Special Commission addressed to the Minister for Foreign Affairs of Iraq

I learnt with alarm of the note 10/4/1/92035 of 7 January 1993 passed from the Ministry for Foreign Affairs to our Field Office in Baghdad, in which the Ministry for Foreign Affairs informed the Special Commission of the decision of the Government of Iraq that the Commission would no longer be able to use its own aircraft for transport into Iraq.

As the Office of the Special Commission has already informed your Permanent Mission to the United Nations, this matter was brought to the attention of the President of the Security Council in the course of 8 January 1993. The Council then considered the issue and, in formal session, adopted a presidential statement. This statement notes that the actions of the Government of Iraq represent an unacceptable and material breach of its obligations. It demands that the Government of Iraq abide by all its obligations arising from United Nations Security Council resolutions and agreements between the Government of Iraq and the United Nations. It also states that failure to abide by these obligations will have serious consequences.

In these circumstances, I have instructed the Special Commission Field Office in Baghdad to present to the Ministry again the flight plans for the UNSCOM C-160 aircraft flights for the coming days. The Special Commission expects to receive acknowledgement in writing of these flight plans in good time for the flights to proceed without delay. Any delay in the receipt of a positive response will be reported to the Security Council forthwith.

(Signed) Rolf EKEUS
Executive Chairman
Office of the Special Commission

Appendix III

Note verbale dated 9 January 1993 from the Special Commission addressed to the Ministry of Foreign Affairs of Iraq

The Special Commission presents its compliments to the Ministry of Foreign Affairs and has the honour to refer to the Ministry's note 10/4/1/92035 of 7 January 1993 which stated that Iraq would no longer permit the Special Commission to use Habbaniyah airport for its own aircraft.

The Special Commission herewith attaches a copy of the presidential statement adopted yesterday by the Security Council meeting in formal session. This statement notes that the actions of the Government of Iraq represent an unacceptable and material breach of its obligations. It demands that the Government of Iraq abide by all its obligations arising from United Nations Security Council resolutions and agreements between the Government of Iraq and the United Nations. It also states that failure to abide by these obligations will have serious consequences.

In these circumstances, the Special Commission presents again flight plans for the UNSCOM C-160 aircraft flights for the coming days. The Special Commission expects to receive acknowledgement in writing of these flight plans in good time for the flights to proceed without delay. Any delay in the receipt of a positive response from the Government of Iraq will be reported to the Security Council forthwith.

Appendix IV

Note verbale dated 13 January 1993 from the Special Commission addressed to the Ministry of Foreign Affairs of Iraq

The Special Commission presents its compliments to the Ministry of Foreign Affairs and has the honour to present flight plans for the UNSCOM C-160 aircraft for the coming days. The Special Commission expects to receive acknowledgement in writing of these flight plans in good time for the flights to proceed without delay.

Appendix V

Note verbale dated 15 January 1993 from the Special Commission addressed to the Ministry of Foreign Affairs of Iraq

The Special Commission presents its compliments to the Ministry of Foreign Affairs and has the honour to refer to the letter of 15 January 1993 from the Chairman of the Special Commission to the President of the Security Council, a copy of which is attached (see appendix VI). It has the further honour to present the attached notifications of flight plans for the UNSCOM C-160 aircraft for the coming days. The Special Commission expects to receive, on a most urgent basis so that these flights may proceed without delay, acknowledgement of these notifications and of Iraq's obligations for ensuring the security and safety of United Nations Special Commission personnel as provided pursuant to Security Council resolutions 687 (1991), 707 (1991) and 715 (1991) and the exchange of letters of May 1991 between the United Nations Secretary-General and the Minister for Foreign Affairs of Iraq.

Attachment

The following are notifications of flight plans for UNSCOM aircraft, C-160 Transall, from Bahrain to Habbaniyah airport and return to Bahrain:

Date	ETA	Location	ETD	Remarks
17 January 1993	ORIG	BAHRAIN	0500Z	UN566/7
(Sunday)	0730Z	HAB	0830Z	STOPOVER
	1100Z	BAHRAIN	TERM.	RTB
18 January 1993	ORIG	BAHRAIN	0500Z	UN566/7
(Monday)	0730Z	HAB	0830Z	STOPOVER
	1100Z	BAHRAIN	TERM.	RTB
19 January 1993	ORIG	BAHRAIN	0500Z	UN566/7
(Tuesday)	0730Z	HAB	0830Z	STOPOVER
	1100Z	BAHRAIN	TERM.	RTB
20 January 1993	ORIG	BAHRAIN	0500Z	UN566/7
(Wednesday)	0730Z	HAB	0830Z	STOPOVER
	1100Z	BAHRAIN	TERM.	RTB

N.B. All times are Zulu.

Appendix VI

Letter dated 15 January 1993 from the Special Commission addressed to the President of the Security Council

I have the honour to inform you that the Special Commission has received a response from the Ministry of Foreign Affairs of Iraq concerning the United Nations Special Commission's notification to carry out flights into Habanniyah airfield over the coming days. In its relevant paragraphs, the response which states that "Iraq does not oppose the granting of your request as contained in the aforesaid note. However, Iraq affirms that it is not responsible for the safety of aircraft inside Iraqi airspace in the event, God forbid, of confusion or error, since all weapons in Iraq, even at the popular level, are trained on defending Iraq's skies and its sovereignty given that it has been subjected to a series of well-known hostile operations and that hostile aircraft are continuing to violate Iraq's sovereignty and to penetrate its airspace."

This response constitutes a refusal on the part of Iraq of the Commission's notification because it abdicates Iraq's obligations for ensuring the security and safety of United Nations Special Commission personnel as provided pursuant to Security Council resolutions 687 (1991), 707 (1991) and 715 (1991) and the exchange of letters of May 1991 between the United Nations Secretary-General and the Minister for Foreign Affairs of Iraq.

The Commission is providing immediately to Iraq new notifications for flights in the coming days, with the expectation that these notifications will be acknowledged in accordance with Iraq's above-mentioned obligations.

(Signed) Rolf EKEUS
Executive Chairman
Office of the Special Commission

Appendix VII

Note verbale dated 16 January 1993 from the Special Commission addressed to the Ministry of Foreign Affairs of Iraq

The Special Commission has the honour to present its compliments to the Ministry of Foreign Affairs of Iraq and to refer to the letter 1/7/22 of 16 January 1993 from the Permanent Representative of Iraq to the United Nations to the Executive Chairman of the Special Commission and the attached note 10/4/2/92107 from the Ministry for Foreign Affairs of Iraq of the same date concerning the notifications for flights of the Commission's aircraft over the coming days.

Under the provisions of United Nations Security Council resolutions 687 (1991), 707 (1991) and 715 (1991) and the exchange of letters of May 1991 between the Secretary-General and the Minister for Foreign Affairs of Iraq, Iraq is responsible for the security and safety of the Special Commission and its personnel. Furthermore, the Commission has the right to unrestricted freedom of entry and exit without hindrance of its personnel and means of transport. It also has the right to conduct both fixed-wing and helicopter flights throughout Iraq for all relevant purposes without interference of any kind and upon such terms and conditions as may be determined by the Commission, and to make such use of its own aircraft and such airfields in Iraq as it may determine are most appropriate for the work of the Commission.

The restrictions imposed by Iraq on the Special Commission would have as a consequence that the Commission cannot effectively carry out its operations in Iraq. Furthermore, this issue has already been addressed in September 1992 when the "no-fly zone" south of the 32nd parallel was established. On that occasion, the Commission informed the Ministry for Foreign Affairs that it would be impractical to operate using the longer route. That remains the case. The Commission has been using the direct route since September 1992 without incident.

The Special Commission informs the Ministry of Foreign Affairs of Iraq that the Commission requires use of the direct route between Bahrain and Habbaniyah airfield and that the Government of Iraq, in accordance with its obligations, ensure the safety and security of the Commission's aircraft and personnel. The Special Commission will coordinate with the States mentioned in the Ministry's note to ensure that they are aware of the flight plans of the Commission's aircraft and hence that they will not represent a threat to the security and safety of the Commission's aircraft and personnel.

Appendix VIII

Note verbale dated 17 January 1993 from the Special Commission addressed to the Ministry of Foreign Affairs of Iraq

The Special Commission presents its compliments to the Ministry for Foreign Affairs of Iraq and has the honour to refer to the Ministry's note 10/4/2/92112 of 17 January 1993, concerning the notifications of flight plans for the Commission's aircraft.

Since the Special Commission is not in a position to make guarantees for the actions of States, this cannot be the basis for the conduct of flights. However, the Commission can, and does as a matter of course, coordinate with the authorities of the three States mentioned in the Ministry's note so that the conditions for safe flights are ensured. The Commission will, as usual under the established procedures, coordinate closely with the competent Iraqi authorities on this matter.

Consequently, the Special Commission informs the Ministry of its intention to conduct flights already notified to the Ministry. The Commission expects to receive acknowledgement of the relevant notifications.